

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

DISC

MM Docket No. 94-76
MM Docket No. 94-77

In the Matter of

Amendment of Section 73.202(b),	RM-8470
Table of Allotments,	RM-8477
FM Broadcast Stations.	RM-8523
(Chester, Shasta Lake City,	RM-8524
Alturas, McCloud and Weaverville,	
California) ¹	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 23, 1996;

Released: May 3, 1996

By the Chief, Allocations Branch:

1. Before the Commission for consideration are two interrelated proceedings requesting FM allotments at various communities in California, that are consolidated herein for resolution. In MM Docket No. 94-76, a *Notice of Proposed Rule Making*, 9 FCC Rcd 3309 (1994), was issued at the request of m. JAYNE sawyer ("sawyer"), proposing the allotment of Channel 296A to Chester, California, as that community's second local FM service (RM-8477). In MM Docket No. 94-77, a *Notice of Proposed Rule Making*, 9 FCC Rcd 3318 (1994), was issued in response to a request filed by Mark C. Allen ("Allen"), proposing the allotment

of Channel 276A to Shasta Lake City, to provide local aural FM transmission service to that newly created community (RM-8470).^{2 3} Supporting comments were filed by sawyer in response to the *Notice* in MM Docket No. 94-76, and by Allen in MM Docket No. 94-77. Goldrush Broadcasting ("Goldrush") filed a timely consolidated counterproposal in the above-captioned proceedings.⁴ Corey J. McCaslin ("McCaslin") filed a timely counterproposal in MM Docket No. 94-77.⁵ Stephen M. Thomas ("Thomas") submitted late-filed comments in the latter proceeding.⁶ No other comments were received.

2. In its consolidated counterproposal Goldrush requested the allotment of Channel 296C3 to Shasta Lake City in lieu of Channel 276A; the allotment of Channel 297C to Alturas, California, as that community's third local FM transmission service; and Channel 276C3 to McCloud, California, as that community's first local commercial FM transmission service.⁷ Goldrush's requested allotment of Channel 296C3 at Shasta Lake City, as well as Channel 297C at Alturas, conflicts with the proposal of sawyer in MM Docket No. 94-76 to allot Channel 296A to Chester, California.⁸ However, in response to sawyer's desire to provide additional FM service to Chester, Goldrush requests consideration of Channel 259A in lieu of Channel 296A at that community. Goldrush's requested allotment of Channel 276C3 at McCloud, California, is mutually exclusive with the proposed allotment of Channel 276A at Shasta Lake City, California, in MM Docket No. 94-77.⁹ Goldrush stated its willingness to apply for construction permits at Alturas, McCloud, and Shasta Lake City.

3. McCaslin counterproposed the allotment of Channel 276C2 to Weaverville, California, as that community's first local aural transmission service, which is mutually-exclusive with Allen's proposal for Channel 276A at Shasta Lake City in MM Docket No. 94-77.¹⁰ As a means of resolving the conflict, McCaslin requests the alternative substitution of Channel 224A for consideration at Shasta Lake City. McCaslin indicated its intention to apply for Channel 276C2 if allotted to Weaverville, as requested.

¹ The communities of Alturas, McCloud and Weaverville, California, have been added to the caption.

² As announced in the *Notice* in MM Docket No. 94-77, the communities of Central Valley, Summit City, Project City and Pine Grove were dissolved and incorporated into the newly created community of Shasta Lake City, pursuant to Resolution No. 93-02 of the Shasta County Local Agency Formation Commission.

³ Moreover, the *Notice* in MM Docket No. 94-77 advised that although Station KNNN(FM), Channel 257C3, is licensed to Central Valley, California (BLH-890706KA), in light of that community's dissolution and incorporation into Shasta Lake City, Section 73.202(b) of the Commission's Rules, the FM Table of Allotments, would be editorially amended at the conclusion of that proceeding to reflect that Channel 257C3 is allotted at Shasta Lake City in lieu of Central Valley. We also note that a construction permit has been issued to Station KNNN(FM) on Channel 257C2 at Central Valley pursuant to the grant of "one step" application File No. BPH-9503221D. We will serve Quality Broadcasters of Redding, L.P., licensee of Station KNNN(FM), with a copy of this *Order*.

⁴ Public Notice of Goldrush's counterproposal was given in Report No. 2029, released September 20, 1994.

⁵ Public Notice of McCaslin's counterproposal was also given in Report No. 2029.

⁶ Thomas' comments were filed after the record closed in MM Docket No. 94-77. The Commission's Rules do not contemplate

the acceptance of pleadings filed beyond the comment period unless specifically requested or authorized by the Commission. See Section 1.415(d) of the Commission's Rules. In this instance, neither criteria is applicable. Moreover, even if Thomas' comments had been timely filed they were not served on the petitioner, in violation of Section 1.420 of the Commission's Rules. See also paragraph 4 of the Appendix to the *Notice*. As Thomas' comments constitute an *ex parte* presentation, they could not be considered in any event. See Sections 1.1200, 1.1202(b)(1) and 1.1208 of the Commission's Rules.

⁷ We note that according to the Commission's records, the State of Oregon has filed an application to commence noncommercial operation on Channel 220A at McCloud (File No. BPED-950210MA).

⁸ The distance between Chester and Shasta Lake City is 102.4 kilometers, whereas a distance of 142 kilometers is required between Class A and C3 co-channel allotments. The distance between Chester and Alturas, California, is 142.3 kilometers, while a minimum distance separation of 165 kilometers is required between Class A and C first-adjacent channel allotments.

⁹ The distance between Shasta Lake City and McCloud, California, is 61 kilometers. A minimum distance of 142 kilometers is required between Class A and C3 co-channel allotments.

¹⁰ The distance between Weaverville and Shasta Lake City is 48.1 kilometers, while a minimum separation of 166 kilometers is required between Class A and C2 co-channel allotments.

4. On the basis of the above, and in the absence of opposition to the counterproposals of Goldrush and McCaslin, we believe that the allotment proposals presented by the counterproponents herein will provide public interest benefits. However, in order to accommodate all parties, we will alter the allotment proposal with respect to McCloud (RM-8523). In this regard, we note that Goldrush's requested allotment of Channel 276C3 at McCloud is also mutually-exclusive with McCaslin's requested allotment of Channel 276C2 at Weaverville (RM-8524). The distance between McCloud and Weaverville is 81.3 kilometers whereas a minimum separation of 177 kilometers is required between Class C2-C3 co-channel allotments. Therefore, to resolve the conflict, we have determined that Channel 238C3 is available at McCloud as an equivalent substitute for requested Channel 276C3 at that community. Additionally, we will allot Channel 296C3 to Shasta Lake City as requested by Goldrush (RM-8523), in lieu of Channel 224A, as requested by McCaslin (RM-8524), consistent with Commission policy to allot the highest class channel requested to a community that meets the technical provisions of our rules. *See Ludlow, California*, 10 FCC Rcd 563 (1995).

5. Our analysis has determined that the new allotment proposals herein can be made in conformity with applicable Commission rules and policies. Channel 259A can be allotted to Chester with a site restriction 3.2 kilometers (2 miles) northwest.¹¹ Channel 296C3 can be allotted to Shasta Lake City with a site restriction 5.5 kilometers (3.4 miles) north.¹² Channel 297C can be allotted to Alturas with a site restriction 1.1 kilometers (0.7 miles) northeast.¹³ Channel 238C3 can be allotted to McCloud without a site restriction.¹⁴ Channel 276C2 can be allotted to Weaverville with a site restriction 10.3 kilometers (6.4 miles) north.¹⁵

6. In addition to the above, we shall also make an editorial amendment to the FM Table of Allotments for Central Valley, California, as announced in the *Notice* in MM Docket No. 94-77.

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective June 17, 1996, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

City	Channel No.
Alturas, California	267C, 293C, 297C
Chester, California	255C, 259A
Central Valley, California	-
McCloud, California	238C3
Shasta Lake City, California	257C3, 296C3
Weaverville, California	276C2

8. The window period for filing applications for Channel 297C at Alturas, Channel 259A at Chester, Channel 238C3 at McCloud, Channel 296C3 at Shasta Lake City, and Channel 276C2 at Weaverville, California, will open on June 17, 1996, and close on July 18, 1996.

¹¹ The coordinates for Channel 259A at Chester are 40-20-00 and 121-15-13.

¹² Coordinates for Channel 296C3 at Shasta Lake City are 40-43-58 and 122-21-59. We note that Channel 296C3 at Shasta Lake City is short spaced to the construction permit issued for Station KMGX(FM) to commence operation on Channel 296C2 at Rio Dell, California, at coordinates 40-30-03 and 124-17-10 (File No. BPH-940919ID). However, the grant of the one-step application for a construction permit for Station KMGX(FM) to operate on Channel 296C2 at Rio Dell did not provide cut-off protection to Goldrush's counterproposal, filed September 2, 1994, to allot Channel 296C3 to Shasta Lake City. See Section 73.208(3)(iii) of the Commission's Rules. In order to remedy the administrative error, a staff engineering review has determined that Channel 296C2 at Rio Dell may be replaced with adjacent Channel 297C2 at the site specified in the construction permit issued for Station KMGX(FM) as indicated above. Moreover, in an effort to demonstrate that Station KMGX(FM) is unlikely to incur harm from the substitution of Channel 297C2 for Channel 296C2 at its currently authorized site, we believe the following background information surrounding Station KMGX(FM) is relevant. Channel 296A was allotted to Rio Dell, California, in MM Docket No. 84-231, 50 FR 3514 (1985). According to the Commission's records, Station KMGX(FM) was originally issued a construction permit for Channel 296A at Rio Dell in 1989 (File No. BPH-890123MQ), followed by another construction permit in 1993 (BPH-930823JG) to replace its expired permit BPH-890123MQ. The subsequent construction permit involved

herein (BPH-940919ID) was issued pursuant to the grant of the one-step application of Station KMGX(FM) to commence operation on Channel 296C2, followed by the issuance of another construction permit (BPH-951003JB) to replace that issued originally (BPH-890123MQ). Station KMGX(FM)'s latest authorization expires June 13, 1996. As Station KMGX(FM) still remains unconstructed, the remedial measure we have ascertained will cure the above noted deficiency, (which requires Station KMGX(FM) to specify operation on Channel 297C2), should not affect the permittee's commitment to provide a local aural FM transmission service to the residents of Rio Dell. The Audio Services Division, by letter dated April 23, 1996, has requested that the permittee for Station KMGX(FM) file a "one step" modification application for a construction permit to specify Channel 297C2 at Rio Dell, California, to resolve the administrative error. Therefore, the issuance of a license on Channel 296C3 at Shasta Lake City, California, may be withheld pending the issuance of an authorization on Channel 297C2 at Rio Dell. As a result of our determination, we will serve a copy of this *Order* on Douglas C. Turnbull, the permittee of Station KMGX(FM), and a copy on his counsel.

¹³ Coordinates for Channel 297C at Alturas are 41-29-34 and 120-31-37.

¹⁴ Coordinates used for Channel 238C3 at McCloud are 41-15-18 and 122-08-24.

¹⁵ Coordinates used for Channel 276C2 at Weaverville are 40-49-32 and 122-55-21.

9. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send a copy of this *Order* by Certified Mail, Return Receipt Requested, to the licensee of Station KNNN(FM) and to the permittee of Station KMGX(FM), as follows:

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10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau